IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.64 OF 2007
Along with
Civil Application No.319 of 2007

Shri Pandurang Krishna Dixit
and anr. .. Appellants.
(Orig.Defts)

Vs

Shri Narayan Tukaram Dixit
and 2 ors. .. Respondents.
(Orig.Plffs)

Mr Mandar Limaye i/b Mr S.M.Oka, for the appellants.
Mr Mohan N.Dhamal, for the respondents.

CORAM : **D.B.BHOSALE,J.**
DATE : 12/03/2007
PC:

1. Heard the learned counsel for the parties.

2. This Second Appeal is directed against the concurrent judgments of the courts below, by which a suit instituted by the respondent-plaintiff for partition and separate possession of his one-half share in the property and for injunction, stands decreed. Mr.Limaye, learned counsel for the appellants, assailed the impugned judgments on two grounds: firstly, the suit was not liable to be decreed in view of a specific plea of the defendant that he perfected the title to the

suit property by adverse possession and that it has not been considered by the courts below in proper perspective and, secondly, he submitted that the description of the suit property given by the plaintiff in the plaint was vague and was not sufficient to identify the property and on that ground the suit was liable to be dismissed. I perused the impugned judgments. The appellate court in paragraphs 19 to 23 has considered the case of the defendant that he has become the owner by adverse possession. From perusal of the observations made in the aforesaid paragraphs, it is clear that the courts below have appreciated the case of the defendant in proper perspective and by applying all the rules and principles of law in holding that the defendant does not become owner by adverse possession. I find absolutely no reason to interfere with the findings on this issue as, in my opinion, they are based on sound principles of law. Insofar as the second submission is concerned, the appellate court in paragraphs 16 to 18 has considered the submission, as advanced in the present appeal, and has recorded a categoric finding that the description given in the plaint was sufficient to identify the property. Merely because some application was filed for the first time in the appellate court contending that the property in dispute is not divisible, is not sufficient to dismiss

the suit. Once having held that the plaintiff is entitled for his share in the suit property, the courts below, in my opinion, have not committed any error of law in decreeing the suit for partition. In the circumstances, the second appeal fails and dismissed as such. As a consequence thereof, the civil application is disposed of.

(D.B.BHOSALE,J.)